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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,166	01/30/2004	Peter David Sinclair Briggs	9218-1	7795
<div>7590 Bruce H. Johnsonbaugh Eckhoff & Hoppe Suite 2800 101 Montgomery Street San Francisco, CA 94104</div>				
<div>01/22/2009</div>				
<div>EXAMINER SHEIKH, ASFAND M</div>				
<div>ART UNIT 3627</div>				
<div>PAPER NUMBER</div>				
<div>MAIL DATE 01/22/2009</div>				
<div>DELIVERY MODE PAPER</div>				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/769,166

Applicant(s)

BRIGGS ET AL.

Examiner

Asfand M. Sheikh

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-23 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 18-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse for the prosecution of Category II in the reply filed on 11/24/2008 is acknowledged.

Claims 14-17 and 24 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Category II and Category III, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/24/2008.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Briggs et al. (US 4,896,793 A) in view of Richards et al. (US 6,351,621 B1).

Briggs et al. teaches a labeling machine with detachable label spool for placing labels on a variety of perishable fruits and/or vegetables.

Briggs et al. does not teach:

- Providing in each label spool an identifying code which uniquely describes the label;

- Reading and inputting identifying code when label spool is activated or deactivated;
- Continuously and automatically inventorying the supply of different coded labels;
- Storing label inventory data for each labeling site, including historical tracking data and optimization data.
- Allowing approved customers to initiate a computerized display of label inventory;
- Allowing approved customers to order selected labels;
- Providing means for detecting activation of non-approved label spools, as well as counting, recording and storing the number of non-approved labels;
- Providing means for shutting down if loaded with non-approved label spool;

Richards et al. teaches a memory chip attached to a removable module and accessed through a wireless interface in order to track inventory and provide Internet based product ordering and supply.

Richards et al. teaches the attached memory chip capable of storing data associated with the removable module. In particular, the chip can store a serial number (unique identifier), count, machine serial number, and/or parameter data (reference Figure 2). Based on the information stored in the memory chip the machine can prevent usage of the machine or track the unauthorized usage of the machine (column 2; lines

1-10, Patent 4,961,088 included by reference), as well as track historical data (column 4; lines 24-27) and generate optimization data (column 4; lines 46-51).

Richards et al. teaches accessing the memory card via a wireless connection. The wireless connection can be used to access data stored in the memory chip or to write data to the chip (column 5; lines 14-22). This wireless connection to the memory chip allows a user to control multiple units across multiple locations.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to attach the memory chip of Richards et al. to the label spool of Briggs et al. in order to allow a user to track the label usage as well as manage inventory and place orders.

Examiner notes that while Richards et al. does not teach the use of the memory chip in label machines, the Examiner has deemed the teachings of Richards et al. and Briggs et al. analogous art. "Two criteria are relevant in determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the art is not within the same field of endeavor, whether it is still reasonably pertinent to the particular problem to be solved." *Wang Lab., Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1766, 1773 (Fed. Cir. 1993) (citations omitted). See also MPEP §2145 IX. In this case Richards et al. solves the same problem as Applicant in terms of tracking and ordering inventory. In addition Examiner asserts that usage of the memory chip on a removable printer cartridge and on a label spool constitute similar fields of endeavor.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Asfand M. Sheikh
Examiner, Art Unit 3627
1/20/09

/Ramsey Refai/
Examiner, Art Unit 3627
January 20, 2009